

PROFESSIONAL SERVICES CONTRACT

This contract is made and entered into the 11th day of September, 2006 between Madison County, Montana and Firescope Mid-America, a Colorado consulting firm having offices at 4416 14th Street Drive, Greeley Colorado, 80634-3139 (hereinafter referred to as Firescope Mid-America or consultant or contractor).

STANDARD TERMS AND CONDITIONS

By entering into this agreement, Firescope Mid-America agrees to acceptance of the following Standard Terms and Conditions as well as any other provisions that are specific to this contract as set forth herein.

- 1. Authority:** This contract is issued under authority of Title 18, Montana Code Annotated, and the Administrative Rules of Montana, Title 2, Chapter 5.
- 2. Access and Retention of Records:** Firescope Mid-America agrees to provide Madison County, the state of Montana or their authorized agents, access to any records necessary to determine contract compliance (MCA. 18-1-118). Contractor agrees to create and retain records supporting the services rendered or supplies delivered for a period of three years after either the completion date of this contract or the conclusion of any claim, litigation, or exception relating to the contract taken by the State of Montana, Madison County or a third party.
- 3. Assignment, Transfer and Subcontracting:** The contractor shall not assign, transfer or subcontract any portion of the contract except as expressly set forth therein without the express written consent of Madison County (MCA 18-4-141)
- 4. Compliance With Laws:** Firescope Mid-America must, in the performance of work under this contract, fully comply with all applicable federal, state, or local laws, rules and regulations, including the Montana Human Rights Act, The Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by Firescope Mid-America subjects subcontractors to the same provision. In accordance with section 49-3-2-7, MCA, the contractor agrees that the hiring of persons to perform any acts under the contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability or national origin by persons performing the contract.
- 5. Conformance With Contract:** No alterations of the terms, conditions, delivery, price, quality, quantities or specifications of the contract shall be granted without prior written consent of Madison County. Material delivered which does not conform to the contract terms, conditions and specifications may be rejected and returned at the contractor's expense.

6. Debarment: Firescope Mid-America certifies, by signature hereon, that neither it nor its principals are presently debarred, suspended or proposed for debarment, declared ineligible or voluntarily excluded from participation in this contract by any governmental department or agency.

7. Force Majeure: Neither party shall be responsible for failure to fulfill its obligations due to causes beyond its reasonable control, including without limitation, acts or omissions of government or military authority, acts of God, materials shortages, transportation delays, fires, floods, labor disturbances, riots, wars, terrorist acts or any other causes, directly or indirectly beyond the reasonable control of the non-performing party, so long as such party is using its best efforts to remedy such failure or delays.

8. Hold Harmless/Indemnification: Firescope Mid-America agrees to indemnify, protect, defend, and save the State and County, their elected and appointed officials, agents and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of Firescope Mid-America or third parties on account of bodily or personal injuries, death or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of the contractor and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of the State, or Madison County under this agreement.

9. Separability: A declaration by any court or any other binding legal source, that any provision of the contract is illegal and void shall not affect the legality and enforceability of any other provision of the contract, unless the provisions are mutually dependent.

10. Termination of Contract for Failure to Perform: Unless otherwise stated, Madison County or the State may, by written notice to the contractor, terminate the contract in whole or in part at any time the contractor fails to perform the contract.

11. Unavailability of Funding: Madison County, at its sole discretion, may terminate or reduce the scope of the contract if available funding is reduced for any reason. (MCA 18-4-313 (3).)

12. U. S. Funds: All prices and payments must be made in U.S. dollars.

13. Venue: This contract is governed by the laws of Montana. The parties agree that any litigation concerning this contract must be brought in the Fifth Judicial District in and for Madison County, State of Montana, and each party shall pay its own costs and attorney fees. (MCA 18-1-1401.)

SERVICES AGREEMENT

14. Period of Performance: The period of performance of this Agreement, for the purpose of issuing task orders hereunder, is from 11 September 2006 to 31 January 2007. This contract may be extended by mutual agreement of both parties in writing.

15. Work to be Performed: Subject to the provision herein, Firescope Mid-America shall, in accordance with task orders issued hereunder, perform tasks in the general area of conducting a comprehensive study aimed at assessing the requirements and existing arrangements for provision of public safety services within that portion of what is generally termed the Big Sky area and which is under the jurisdiction of Madison County and arriving at alternatives and recommendations related thereto for improvement of these services in order to provide the Madison County Board of Commissioners with the information necessary for them to make decisions as to how best to fulfill their public safety responsibilities. The scope of the study is to encompass the entire spectrum of public safety services including law enforcement, fire prevention and suppression, emergency medical services, search and rescue and any other such services as may be identified in the course of this study. The provisions of Madison County Resolution 32-2006 form the basis for the work to be done.

16. Statement of Work: An initial statement of work to be performed is attached and made a part of this agreement. Madison County may, from time to time, issue written task orders under this agreement which will specify: (a) the statement of work to be performed; (b) security requirements, if any; (c) ceiling price or amount of the order, including all charges and travel authorizations, if any; and (d) any other applicable instructions. Such task orders will incorporate this agreement by reference.

17. Madison County Obligations: Nothing herein shall be construed as an obligation of Madison County to issue any tasks hereunder and the limit of Madison County's liability shall extend only to such task orders as it may issue. Task orders, when issued, are subject to review and acceptance by the contractor, who shall accept by signing and returning a copy of the task order in the space so provided.

18. Compensation: Madison County will pay Firescope Mid-American in accordance with the terms indicated in the attached Statement of Work, Attachment A, which is a part of this agreement. The contractor shall submit requests for payment indicating achievement of the pertinent milestones shown therein to the Madison County Director of Emergency Management for certification and payment. All such requests for payment for the initial Statement of Work (attached) must be submitted prior to 31 January 2007. Requests for payment relative to this initial Statement of Work submitted after 31 January 2007 will not be honored unless the completion date is extended per section 14 of this agreement. In such cases there will be a day for day extension for this final submittal.

19. Independent Contractor: Firescope Mid-America shall be deemed at all times to be an independent Contractor. Neither Firescope Mid-America nor its personnel shall at

any time, or for any purpose, be considered employees or agents of Madison County, or the state of Montana.. Madison County is hereby contracting with Firescope Mid-America for the services described herein and in the Statement of Work and the contractor is not required to perform the services during a fixed hourly or daily time. If the services are performed at Madison County premises, those of any State or local government entities or those of any of the non-governmental parties involved, Firescope Mid-America's time spent at those premises is to be at the discretion of the contractor; subject to normal business hours and security requirements. Firescope Mid-America hereby confirms to Madison County that Madison County will not be required to furnish or provide any training to Firescope Mid-America to enable the contractor to perform the services required hereunder. The services are to be performed by Firescope Mid-America. Madison County or any other State, Federal or non-governmental entity involved in performance under this contract shall not be required to hire, supervise or pay any assistants to help the contractor perform the services under this agreement. The management of the work, including but not limited to the order or sequence in which it is performed, shall be under the control of Firescope Mid-America, subject to compliance with the Statement of Work. Except to the extent that the contractor's work must be performed on or with a computer of Madison County or one or more of the State, federal, county, town or non-governmental entities involved in performance under this agreement, all materials used in providing the services shall be provided by Firescope Mid-America. Firescope Mid-America shall provide any insurance coverage that is required in the normal course of business as well as any specialized insurance that is specifically called for in this agreement. The parties understand and agree that, as an independent contractor, Firescope Mid-America does not have any authority to sign contracts, notes, obligations or make purchases, or to acquire or dispose of any property for or on behalf of Madison County or any other of the governmental and non-governmental entities involved in the performance of this agreement.

20. Warranty: Firescope Mid-America hereby warrants to Madison County that the firm is not under any obligation, contract or agreement, nor has the firm previously executed any documents whatsoever, with any person, firm, association, or corporation that would in any manner prevent Firescope Mid-America from giving, and Madison County from receiving, the full benefit of the firm's impartial consulting services. All work performed under this agreement and any formal reports created there from shall be the unique result of the tasks performed as set forth herein.

21. Proprietary Information: Firescope Mid-America agrees that at all times both during the term of this agreement and three (3) years after termination thereof, the firm will hold inviolate and keep secret all knowledge, information, data, trade secrets, inventions and customer lists that have been clearly designated as proprietary by Madison County or any other entities involved in the performance of this agreement. Firescope Mid-America, under the terms of this agreement, will not disclose such information to any competitor or other individual, corporation or firm except when authorized to do so by Madison County or the state of Montana, in writing. Firescope Mid-America also agrees to abide by all federal and state mandated security regulations and procedures. Nothing herein shall be construed as to preclude Firescope Mid-America from engaging

in any occupation or endeavor which will not directly involve the proprietary or security information of Madison County, the state of Montana or the United States government. Contractor agrees to abide by current federal, state and local security laws and regulations.

Firescope Mid-America's obligations with respect to handling and using proprietary information as set forth in this agreement are not applicable to: (1) Information that at the time of disclosure under this agreement is either known to Firescope Mid-America or disclosed in existing publicly available literature or patents; (2) Information that after disclosure under this agreement becomes known to the contractor by independent discovery or by casual observation or analysis of information provided by a third party; (3) Information that after disclosure under this agreement becomes known to Firescope Mid-America from a source other than Madison County without breach of any obligation by the disclosing party; (4) Information that is or has been furnished by the disclosing party to the Government with "unlimited" rights.

22. Release of Information: Firescope Mid-America shall not make any public release of information in any medium concerning this agreement without prior review and approval by Madison County. Requests for review of any materials proposed for public release in any medium; shall be submitted in writing to the Madison County Director of Emergency Management for approval, which shall not be unduly withheld.

23. Assignment: Neither party shall assign or transfer this agreement without written agreement from the other party.

24. Non-Solicitation: Madison County hereby agrees for the term of this agreement, and for a period of one (1) year thereafter, that Madison County shall not directly or indirectly, orally or in writing or by any other method of communication, solicit any employee, agent or consultant of Firescope Mid-America, nor encourage any employee, agent or consultant to terminate his or her employment of relationship with the contractor. .

25. Waiver: The failure of either party to this agreement to insist on strict performance of any of the terms and conditions hereof shall not constitute a waiver of any other provisions.

26. Construction: Paragraph headings are for convenience only and shall not affect the interpretation of this agreement. If the scope of any of the provisions of the agreement is too broad in any respect whatsoever to permit enforcement to its full extent, then such provisions shall be enforced to the maximum extent permitted by law, and the parties hereto consent and agree that such scope may be judicially modified accordingly and that the whole of such provisions of this agreement shall not thereby fail, but that the scope of such provisions shall be curtailed only to the extent necessary to conform to the law.

27. Entire Agreement: This agreement supersedes all previous agreements, both oral

and in writing and contains all the terms and conditions of this transaction. All modifications to this agreement must be reduced to writing as amendments and duly executed by both parties hereto.

SIGNATURES

In witness whereof, the following parties have executed the Agreement as set forth herein:

For Firescope Mid-America

Douglas P. Forsman
President

Date

For Madison County

C. Ted Coffman
Chairman
Board of County Commissioners

Date

MADISON COUNTY PUBLIC SAFETY ASSESSMENT AND PLAN FOR BIG SKY

1.0 Introduction and Issues

1.1 Big Sky is an unincorporated resort area located in the Madison Mountains of south-central Montana. The western portion of the area is within the confines of Madison County, the remainder is in Gallatin County. In the past there has been a total lack of public safety radio communications capability together with extreme difficulty in physical access from the remainder of Madison County to the Big Sky area. The result has been that entities within Gallatin County have provided virtually the entire spectrum of public safety services within Big Sky under a variety of arrangements. Recent accelerated growth, together with attendant changes in technological and other capabilities have combined to create a climate wherein a reassessment of all aspects of the existing provisions for public safety in the Madison County portion of Big Sky would appear to be propitious. It also facilitates consideration by the Madison County Board of Commissioners as to the manner in which their responsibilities to the public are being fulfilled.

1.2 Madison County requests the following Public Safety Service Analysis in furtherance of Madison County Board of Commissioners Resolution 32-2006 of 29 June 2006 (attached):

- Determination of the legal and societal requirements for county public safety services in the Madison County portion of Big Sky.
- Analysis of the existing arrangements for provision of the services so identified; together with costs, sources and infrastructure related to personnel, financial and other resources involved in the provision of those services.
- Assessment of alternatives available for the provision of all public safety services to the Madison County portion of Big Sky, including financial and other resource implications along with determination of the potential impact upon level of services and capabilities of each alternative. This assessment will specifically address the capability of identified alternatives to respond to anticipated growth in the area both in terms of resource

requirements and potential ability to meet foreseeable requirements from identifiable sources.

- Development of a final report aimed at providing information suitable for decision making by the Madison County Board of Commissioners as they seek to determine how best to fulfill their public safety responsibilities.

- 1.3 Firescope Mid-America will serve as the overall program manager and will be responsible for meeting the requirements of this agreement and statement of work. The contractor will work in close and frequent liaison with the Madison County primary point of contact.
- 1.3 The Madison County Director of Emergency Management will act as the primary point of contact with the contractor for matters relating to the work to be performed. The Planning Director will act as alternate point of contact for the county in the absence of the Director of Emergency Management or as designated by him. All invoices, statements of completion and requests for payment will be submitted to County point of contact for verification and processing for payment.
- 1.4 The Madison County Board of Commissioners may, at its discretion, establish an advisory board, guidance committee or such other administrative arrangement as they deem necessary to assist and advise the Director of Emergency Management during the course of this agreement.

2.0 Tasks to be Performed

This Statement of Work (SOW) is an integral part of the Professional Services Contract entered into on 11 September 2006 between Firescope Mid-America and Madison County. The contractor will perform the following tasks in completion of this statement of work:

- 2.1 **Determine legal requirements and contemporary standards for the provision of public safety services, including compliance with the National Incident Management System (NIMS).** Public safety services to be considered include (but are not limited to): disaster & emergency management; law enforcement; wildland and structural fire prevention and suppression; emergency medical services; and search and rescue; together with the associated command, control and communications infrastructure and such other support functions as may be necessary to enable effective provision of such services. The contractor will seek to establish operational capabilities that reflect the needs of the Big Sky community, including its unique political, geographical, topographical and environmental features and with due consideration for the perspectives of the long term residents, seasonal users and the recurring demands of special events and the like which are a fact of life in the area.

- 2.2 Review Existing System and Capabilities.** Through interview of current providers, associated entities, developers and affected citizens and through such other methods as may be found useful, determine the current state of public safety services in the Madison County portion of Big Sky, including the Mountain Village, Yellowstone Club, Spanish Peaks development and the Jack Creek drainage. In addition to the specified individual interviews with prominent entities and agencies as set forth herein, at least one public meeting will be scheduled in Big Sky and facilitated by the contractor in order to encourage public input into the initial assessment and review. This review will include both the level of services provided and detailed consideration of the financial and other resource requirements together with sources utilized in achieving that service level within the unique environment of Big Sky. Significant factors and problems which may be identified are to be addressed in detail sufficient for management consideration.
- 2.3 Develop and Analyze Alternatives.** The contractor will identify feasible alternatives for the provision of public safety services in their entirety and evaluate the ability of each to fulfill system attributes developed under task 2.1. A financial analysis, including operational and capital requirements, cost-benefit analysis and potential sources of funding and other resources (to include personnel and infrastructure requirements) will be included for each alternative developed. Transition and long-term considerations are to be analyzed in appropriate detail. The desired end result is to allow judicious consideration and evaluation of the alternatives in order to determine that most appropriate for implementation by Madison County.
- 2.4 Progress Reports.** Close liaison between the County point of contact and the contractor will be very important to successful completion of the agreed upon work. Such liaison will consist primarily of less formal electronic mail, telephone calls and personal interaction during the contractor's site visits, however written monthly status reports may be required at the discretion of the County point of contact. It is anticipated that bi-weekly conference calls will be necessary in fulfillment of this task. Such conferences will be scheduled by the Madison County point of contact in coordination with the contractor. The calls themselves are intended to formally update Madison County points of contact and any advisory group or guidance committee which may be instituted as outlined in Paragraph 1.4 above as to the study's progress. They will also serve to allow the parties to suggest any changes or bring potential problems to light in the interests of early resolution.
- 2.5 Develop a Draft Report.** The contractor will prepare a draft report, outlining the findings and analyses, together with any recommendations

arising there from. This document will be in sufficient detail and in a format suitable for consumption and discussion by members of the public as well as by the senior elected officials and their staff.

2.6 Solicit and Assess Public Response to developed alternatives and refine as appropriate. The contractor will conduct at least one appropriately advertised community meeting (open to the public) in the Big Sky area to present the draft report and obtain citizen input. These meetings will be facilitated by an appropriately qualified individual whose function will be to ensure adequate opportunity for public input while adhering to the stated objective of this task. The resulting citizen response will be incorporated into preparation of the Final Report.

2.7 Prepare a Final Report and Recommendation. Following completion of Task 2.6 and upon review of the Draft Report by the Madison County Planner and Director of Emergency Management, provide a final report and recommendation. This document will include a focused Executive Summary directed primarily at the Board of Commissioners and senior management. Up to ten paper copies and three CD-ROMs (in agreed upon format) of this report will be provided to the Madison County point of contact. A formal presentation of the entire report will be provided to the Board of Commissioners in scheduled public meeting. An overview presentation in workshop format may also be provided in Virginia City on the same day at the discretion of the Board of Commissioners.

3.0 Schedule. Assuming execution and notice to proceed is received by 15 September, 2006; this project is to be completed not later than 10 December, 2006, to include presentation and acceptance of the final report and recommendation. This schedule may be adjusted by mutual agreement, however no such adjustment is anticipated at time of signing and the contractor is advised that time is of the essence in this contract. Completion as scheduled is an inherent part of satisfactory performance.

4.0 Additional Tasks. Adjustment of this agreement may be undertaken by mutual agreement to include:

- 4.1** Additional project management effort, teleconferences, meetings, status reports, re-mobilization effort, etc as a result of project delays.
- 4.2** Additional copies of any reports beyond those described.
- 4.3** Multiple presentations, over multiple days.
- 4.4** Additional review meetings beyond those described herein.
- 4.5** Program Coordination & Integration assistance

5.0 Staffing

Frank Ford will serve as Madison County point of contact: He can be reached at:

Frank R. Ford

Madison County Director of Emergency Management

PO Box 278

Virginia City, MT, 59755

Phone: 406-843-4253

Cell Phone: 406-596-0171

Fax: 406-843-5268

Email: homesec@3rivers.net

Doris Fischer will serve as alternate Madison County point of contact. Doris can be reached at:

Doris Fischer

Madison County Planner

PO Box 278

Virginia City, MT, 59755

Phone 406-843-5250

Email: planner@3rivers.net

6.0 Costs (Not to exceed)

6.1 Professional Fees. All tasks within this statement of work will be accomplished within a firm fixed price of \$30,800, including normal and usual travel expenses. Quality lodging will be supplied to the contractor in the Big Sky area during scheduled visits to Big Sky. Such lodging will, as a minimum, consist of non-smoking single occupancy units for two people during the first trip (up to four nights) and for a single person on the second trip (up to two nights).

6.2 Schedule of Payments:

Completion of Tasks 2.1 and 2.2.....	\$ 9 240
Completion of Task 2.5.....	\$ 9,240
Completion of all currently agreed upon tasks.....	\$12,320
TOTAL.....	\$30,800

6.3 Additional Tasks. For work contracted as additional services through 31 March, 2007 the following rates apply:

- Travel Mode (regardless of hours actually worked).....\$900/day
- At the Firescope Mid-America Home Office (billed in minimum increments of 0.5 hours).....\$120/hour

7.0 Assumptions and Constraints. This Statement of Work assumes that all the participating parties entered into the agreement in a spirit of good faith and intent to perform. The SOW assumes that Firescope Mid-America will perform all of the tasks as set forth in Section 2.0, excluding optional tasks and will meet the schedule set forth herein. This program, including all research, analyses, and recommendations, is limited to the Madison County portion of Big Sky and such adjoining areas of Madison County as may be affected. It will include this area and Madison County's interface with appropriate federal, state, and local entities. The deletion of a task or significant change in scope of one or more tasks may affect the overall price.

8.0 Signatures

By signature herein the signatories certify their agreement and intent to comply with the terms of this Statement of Work.

Agreement by Firescope Mid-America:

Douglas P Forsman
President
September 2006

Agreement by Madison County representative:

Frank R. Ford
Director of Emergency Management
11 September 2006